



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R07-UST-2021-0345; FRL-8775-02-R7]

Kansas: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Kansas's Underground Storage Tank (UST) program submitted by the Kansas Department of Health and Environment (KDHE). This action also codifies EPA's approval of Kansas's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives adverse comments, it will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line

instructions for submitting comments.

2. *E-mail: mance.cassandra@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA-R07-UST-2021-0345.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the document for assistance.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through www.regulations.gov.

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials either through www.regulations.gov or by contacting Cassandra Mance at (913) 551-7355 or mance.cassandra@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 7 office will be closed to the public to reduce the risk of transmitting COVID-19. Please call or email the contact listed above if you need access to material indexed but not provided in the docket.

FOR FURTHER INFORMATION CONTACT: Cassandra Mance, Tanks, Toxics, and Pesticides Branch, Land, Chemical, and Redevelopment Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; (913) 551-7355; mance.cassandra@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Kansas's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

B. What decisions has the EPA made in this rule?

On February 11, 2021, in accordance with 40 CFR 281.51(a), Kansas submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Kansas's revisions correspond to the EPA final rule published on July 15,

2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. We have reviewed the State Application and determined that the revisions to Kansas's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Kansas program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Kansas final approval to operate its UST program with the changes described in the program revision application and as outlined below in section I.G. of this document.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Kansas and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an opportunity for public comment now.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this issue of the *Federal Register* that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA

receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Kansas previously been approved?

On June 6, 1994, the EPA finalized a rule approving the UST program, effective July 6, 1994, to operate in lieu of the Federal program. On September 27, 1994, effective November 28, 1994, the EPA codified the approved Kansas program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

On February 11, 2021, in accordance with 40 CFR 281.51(a), Kansas submitted a complete application for final approval of its UST program revisions adopted on July 6, 2020. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Kansas's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Kansas final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	KAR 28-44 Sections 13; 14; 16; 17(a); 17(c); 19; 23; and 31
40 CFR 281.31, Upgrading Existing UST Systems	KAR 28-44 Sections 16(a) – (b) and 31
40 CFR 281.32, General Operating Requirements	KAR 28-44 Sections 19 and 23
40 CFR 281.33, Release Detection	KAR 28-44 Sections 23 and 31
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	KAR 28-44 Section 24

40 CFR 281.35, Release Response and Corrective Action	KAR 28-44 Section 25
40 CFR 281.36, Out-of-service Systems and Closure	KAR 28-44 Sections 26 and 31
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	KAR 28-44 Section 27
40 CFR 281.39, Operator Training	KAR 28-44 Section 30
40 CFR 281.41, Legal Authorities for Enforcement Response	KAR 28-44 Section 12

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The KDHE has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Kansas Statutes Annotated, Chapter 65, Article 34, Section 100 *et seq.*, and Kansas Administrative Regulations, Chapter 28, Article 44.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law pursuant to 40 CFR 281.12(a)(3)(ii):

Kansas statutes and regulations include references to the aboveground storage tank program, which is broader in scope than the Federal program. KSA 65-34 Sections 105(a)(2), 105(a)(13), 106(a), 118, 129, and 130; KAR 28-44 Section 29.

Agreements between the secretary and local governments or agencies to act as the secretary's agent in order to carry out provisions of the Kansas Storage Tank Act are broader in scope than the Federal program. KSA 65-34 Section 112.

Kansas statutory provisions related to the petroleum storage tank release trust funds, environmental assurance fee, and storage tank fee fund are broader in scope than the Federal program. KSA 65-34 Sections 114, 117, 119 – 125, and 128.

Kansas statutory provisions related to the third-party liability insurance plan and severability are broader in scope than the Federal program. KSA 65-34 Sections 126 and 127.

Kansas statutory provisions related to the UST redevelopment fund are broader in scope. KSA 65-34 Sections 131 – 134.

Each person installing, removing, or testing a UST or UST system must be licensed in Kansas, submit nonrefundable initial licensing and annual renewal fees, and may have a license suspended or revoked if the requirements are not met. KSA 65-34 Sections 105(a)(8), 105(a)(11), 105(a)(12), 110, and 111; KAR 28-44 Sections 12(c), 12(d), 20, 21, and 22.

Each owner must obtain an installation or modification permit from the department before installing or modifying a UST or UST system and submit an installation application fee. KSA 65-34 Sections 105(a)(10) and 106; KAR 28-44 Sections 12(d) and 15.

Each owner of a UST must submit a registration fee and an annual operating fee for each tank. If an owner fails to submit the completed registration notification form or secure an annual operating permit within the state-specified timeframe, the owner will be assessed penalty fees. KSA 65-34 Section 105(a)(10); KAR 28-44 Sections 12(d), 17(b), 17(c) as it applies to penalty fees, 17(d), 17(e), and 17(f).

Any owner or operator of a nonregulated tank may register that tank with the department for the purpose of qualifying the owner or operator to participate in the petroleum storage tank release trust funds. KAR 28-44 Section 18.

More Stringent Provisions

The following regulatory requirements are considered more stringent than the federal program, and on approval, they become part of the federally approved program and are federally enforceable pursuant to 40 CFR 281.12(a)(3)(i):

UST systems with impressed current cathodic protection systems must be inspected every 30 days to ensure the equipment is running properly. KAR 28-44 Section 19(a)(2).

In addition to the recordkeeping requirements listed at 40 CFR 280.34(b), owners and operators of UST systems shall also maintain records on the drop tickets for the preceding 12 months. Kansas defines drop tickets as a bill of lading, invoice, or similar document that reflects fuel delivery by a petroleum transport company to a specific facility and includes the deliverer's name, the delivery date, and the quantity delivered. KAR 28-44 Sections 14(c)(1) and 19(a)(8)(B)(iii).

Only field-constructed tanks and airport hydrant fuel distribution systems can use vapor monitoring as an approved leak detection method. KAR 28-44 Section 23(e).

Groundwater monitoring is not an approved leak detection method. KAR 28-44 Section 23(f).

Within 15 days of permanent closure, each owner or operator shall ensure that each contractor submits a completed permanent tank abandonment form to the department. KAR 28-44 Section 26(a)(3)(C).

No comparable exam is accepted for operator training. KAR 28-44 Section 30(a)(1)(A).

Each Class A operator of a facility or group of facilities shall reside or be stationed within four hours of each managed facility to respond to emergencies as needed. KAR 28-44 Section 30(a)(1)(C).

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current

status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Kansas's UST program?

EPA incorporated by reference the KDHE approved UST program effective November 28, 1994 (59 FR 186; September 27, 1994). In this document, EPA is revising 40 CFR 282.66 to include the approved revisions.

C. What codification decisions have we made in this rule?

Incorporation by reference: In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the federally approved Kansas UST program described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, this document generally available through www.regulations.gov or by contacting the EPA Region 7 contact listed in the **ADDRESSES** section of this preamble.

The purpose of this *Federal Register* document is to codify Kansas's approved UST program. The codification reflects the State program that would be in effect at the time EPA's approved revisions to the Kansas UST program addressed in this direct final rule become final. The document incorporates by reference Kansas's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Kansas program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Kansas program.

EPA is incorporating by reference the Kansas approved UST program in 40 CFR 282.66. Section 282.66(d)(1)(i) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.66 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of

Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of Kansas's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Kansas procedural and enforcement authorities. Section 282.66(d)(1)(ii) of 40 CFR lists those approved Kansas authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. Section 281.12(a)(3)(ii) of 40 CFR states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of federal enforcement in part 282. Section 282.66(d)(1)(iii) lists for reference and clarity the Kansas statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Kansas's UST Program requirements pursuant to RCRA

section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as

part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Services of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

H. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and

imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive order.

J. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: August 24, 2021.

Edward H. Chu,
Acting Regional Administrator,
EPA Region 7.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise §282.66 to read as follows:

§282.66 Kansas State-Administered Program.

(a) *History of the approval of Kansas's program.* The State of Kansas is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Kansas Department of Health and Environment, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Kansas program on June 6, 1994, and it was effective on July 6, 1994. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* Kansas has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retaining program approval.* To retain program approval, Kansas must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If Kansas obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the *Federal Register*.

(d) *Final program approval.* Kansas has final approval for the following elements of its program application originally submitted to EPA and approved on June 6, 1994 and effective July 6, 1994, and the program revision application approved by EPA, effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]:**

(1) *State statutes and regulations--(i) Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Kansas regulations and statutes that are incorporated by reference in this paragraph from the Kansas Department of Health and Environment website at: www.kdheks.gov/tanks/regs.html or the KDHE Storage Tank Section, 1000 SW Jackson, Suite 410, Topeka, KS 66612; Phone number: (785) 296-1678. You may inspect all approved material at the EPA Region 7 Office, 11201 Renner Boulevard, Lenexa, KS 66219; Phone Number: (913) 551-7355; or the National Archives and Records Administration

(NARA), Email: fedreg.legal@nara.gov, website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) EPA-Approved Kansas Statutory Requirements Applicable to the Underground Storage Tank Program, July 2015.

(B) EPA-Approved Kansas Regulatory Requirements Applicable to the Underground Storage Tank Program, July 2020.

(ii) *Legal basis.* EPA evaluated the following statutes, which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference for enforcement purposes and do not replace Federal authorities: Kansas Statutes Annotated, Chapter 65, Public Health, Article 34, Kansas Storage Tank Act, Sections: 108 – Enforcement of act: duties of owner or operator; records, reports, documents, other information; 109 – Unlawful acts: penalties; and 113 – Civil penalties and remedies for violations.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference in this section for enforcement purposes:

(A) Kansas Statutes Annotated, Chapter 65, Public Health, Article 34, Kansas Storage Tank Act, Sections: 105(a)(2) and 105(a)(13) as they apply to aboveground storage tanks; 105(a)(8) as it applies to tank tightness tester qualifications; 105(a)(10) as it applies to registration and permit fees; 105(a)(11) and 105(a)(12) as they apply to licensing tank installers and/or contractors and fees for these licenses; 106 as it applies to aboveground storage tanks and permits to construct, install, or modify storage tanks; 110 as it applies to licensing tank installers and contractors; 111 as it applies to suspension of licenses; 112 as it applies to agreements between secretary and local governments; 114 as it applies to the underground petroleum storage tank release trust fund; 117 as it applies to the environmental assurance fee; 118 as it applies to corrective action for aboveground storage tanks; 119 - 125 as they apply to the petroleum storage

tank release trust funds; 126 and 127 as they apply to the third party liability insurance plan; 128 as it applies to the storage tank fee fund; 129 and 130 as they apply to the aboveground petroleum storage tank release trust fund; 131 - 134 and 139 as they apply to the UST redevelopment fund.

(B) Kansas Department of Health and Environment Permanent Administrative Regulations, Chapter 28, Article 44, Petroleum Products Storage Tanks, Sections: 12(c) as it applies to the suspension and revocation of licenses; 12(d) as it applies to fee payments; 15 as it applies to underground storage tank installation or modification permits and the fees for these permits; 17(b)-(f) as they apply to the fees for underground storage tank registration and annual operating permits and the associated penalties; 18 as it applies to registration of non-regulated underground storage tanks; 20-22 as they apply to licensing underground storage tank contractors, installers, testers, and removers, fees for these licenses, and the suspension or revocation of tester licenses; 29 as it applies to aboveground storage tanks.

(2) *Statement of legal authority.* The “Attorney General’s Letter of Certification”, signed by the Kansas Attorney General on August 23, 1993, and December 4, 2020, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Adequate Enforcement Procedures” submitted as part of the original application on July 2, 1992, and as part of the program revision application on February 11, 2021, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on July 2, 1992, and as part of the program revision application on February 11, 2021, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 7 and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on March 25, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by revising the entry for “Kansas” to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Kansas

(a) The statutory provisions include Kansas Statutes Annotated, 2015; Chapter 65, Public Health; Article 34, Solid and Hazardous Waste; Section 100 *et seq.*, Kansas Storage Tank Act:

Section 100 Statement of legislative findings

Section 101 Citation of Act

Section 102 Definitions

Section 103 Exceptions to application of Act

Section 104 Notification to department of tank’s existence

Section 105 Rules and regulations, except for 65-34, 105 (a)(2), the following words in (a)(8), “including determination of the qualifications of persons performing or offering to perform such testing,” (a)(10), (a)(11), (a)(12) and the following words in (a)(13), “and aboveground storage tanks in existence on July 1, 1992” and “and aboveground storage tanks placed in service prior to July 1, 1992”

Section 106 Permit to construct, install, modify, or operate storage tank, except the following words in the title and (a), “construct, install, modify or” and “and any aboveground storage tank registered with the department on July 1, 1992,”

Section 107 Evidence of financial responsibility required; limitation of liability

Section 115 Liability for costs of corrective action

Section 118 Corrective action; duties of owners and operators; duties of Secretary; consent agreement; contents, except for the following words in (b), “or from the aboveground fund, if the release was from an aboveground petroleum storage tank.” and “or from the aboveground fund, if the release was from an aboveground petroleum storage tank.”

Section 135 Underground storage tank operators, training program, requirements

Section 138 Underground storage tank systems; secondary containment

(b) The regulatory provisions include Kansas Administrative Regulations, 2020; Chapter 28, Department of Health and Environment; Article 44, Petroleum Products Storage Tanks:

Section 12 General provisions, except (c) and (d)

Section 13 Program scope and interim prohibition

Section 14 Definitions

Section 16 Underground storage tank systems: design, construction, installation, modification, and notification

Section 17 Underground storage tank registration and operating permit, except (b), the following words in (c), “be assessed a penalty fee of \$50.00 for each tank if the owner fails to”, (d), (e), and (f)

Section 19 General operating requirements

Section 23 Release detection

Section 24 Release reporting, investigation, and confirmation

Section 25 Release response and corrective action for UST systems

Section 26 Out-of-service UST systems and closure

Section 27 Financial responsibility

Section 30 Operating training and requirements

Section 31 UST systems with field-constructed tanks and airport hydrant fuel
distribution systems

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